No. 21696

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EUGENIO LOZA-BEDOYA,

Petitioner,

vs.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

PETITIONER'S OPENING BRIEF

JOHN F. SHEFFIELD &
NORMAN B. SILVER
412 West Sixth Street
Los Angeles, California 90014

Attorneys for Petitioner

No. 21696

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EUGENIO LOZA-BEDOYA,

Petitioner,

vs.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

PETITIONER'S OPENING BRIEF

JOHN F. SHEFFIELD &
NORMAN B. SILVER
412 West Sixth Street
Los Angeles, California 90014

Attorneys for Petitioner

TOPICAL INDEX

	Page
Table of Authorities	i & ii
STATEMENT OF FACTS	1
SPECIFICATIONS OF ERROR	5
CONCISE ARGUMENT OF THE CASE	7

TABLE OF AUTHORITIES

Cases

Escobedo v. Illinois, 376 U.S. 478, 12 L.Ed.2d 977, 84 S.Ct. 1758	16, 18
Gault v. Arizona, Decided U.S. Supt.Ct. May, 1967	22
Massiah v. United States, 377 U.S. 201, 12 L.Ed.2d 246, 84 S.Ct. 1199	16
Miranda v. Arizona, 384 U.S. 436, 16 L.Ed.2d 694, 86 S.Ct. 1602	16, 17, 18
People v. Ebner, 64 Cal.2d 297, 49 Cal.Rptr. 790, 411 Pac.2d 578	18, 19
People v. McGinnis, 57 Cal.Rptr. 661	19
People v. Shanklin, 243 A.C.A. 94, 52 Cal.Rptr. 28	19
Rose v. Woolwine, 344 Fed.2d 993	7, 9
Sherman v. Immigration & Naturalization Service, 385 U.S. ___, 17 L.Ed.2d 362, 87 S.Ct. 483	20, 21

Tejeda v. United States Immigration & Naturalization Serv., 346 Fed. 2d 389 — 10, 12

Wadman v. Immigration & Naturalization Service, 329 Fed. 2d 812 — 15, 16

Woodby v. Immigration & Naturalization Service, Case #40, October term, 1966, 385 U.S. ___, 17 L. Ed. 2d 362, 87 S. Ct. 483 — 20, 21

Statutes

8 C.F.R. 242.16 — 12

8 C.F.R. 242.17 — 12, 14

Immigration & Nationality Act (1917) §3 — 13, 14

Immigration & Nationality Act §212(a)(31) — 4

Immigration & Nationality Act (1952) §212(c) — 13, 14

Immigration & Nationality Act (1952) §244(a)(1) — 14, 15

Immigration & Nationality Act §1182(a)(31) — 3, 6

8 USCA 144 — 2, 17

8 USCA 1182(a)(31) — 22

8 USCA 1251 (a)(2) — 8

8 USCA 1251 (a)(5), (1305) — 8

No. 21696

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EUGENIO LOZA-BEDOYA,

Petitioner,

vs.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

PETITIONER'S OPENING BRIEF

STATEMENT OF FACTS

This is a petition for review of Order of Deportation.

The petitioner in these proceedings is a native of Mexico, who is married to a United States citizen spouse, and the father of three American citizen children. He is the head of the family and supports five persons besides himself in the United States.

He owns his own home and personal property and is engaged presently in his own business as that of a brick mason - contractor.

Petitioner has resided in the United States since 1944.

In 1951, in San Diego, California, in the United States District Court, Petitioner was convicted after entering his plea of guilty upon the charge of bringing an alien into the United States in violation of then Section 8 USCA 144, which reads as follows:

> "Any person, including the master, agent, owner, or consignee of any vessel, who shall bring into or land in the United States, by vessel or otherwise, or shall attempt by himself or through another, to bring into or land in the United States by vessel or otherwise, or shall conceal or harbor or attempt to conceal or harbor, or assist or abet another to conceal or harbor, in any place, including any building, vessel, railway car, conveyance, or vehicle, any alien not duly admitted by an Immigrant Inspector and not lawfully entitled to enter or to reside within the United States, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding $2,000.00 and by imprisonment for a term not exceeding five years for each and every alien so landed or brought in or attempted to be landed or brought in."

Petitioner has been refused an immigration visa by the American Consul in Nogales, Mexico in August, 1962.

Refusal of the visa was apparently based on the conviction in 1951 in San Diego, California, charging the petitioner with illegally bringing an alien into the United States.

Petitioner is informed and believes that the basis for the refusal of the American Consul to issue him an immigration visa was based on the application of Section 1182 (a) (31) of the Immigration and Nationality Act, which reads as follows:

> "(a) Except as otherwise provided in this Chapter, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States: . . .
>
> "(31) Any alien who at any time shall have knowingly and for gain, encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter into the United States in violation of law."

Petitioner's residence since 1944 was interrupted by his deportation in July, 1953, after his conviction as aforesaid in the United States District Court of San Diego, California.

He illegally returned about August, 1953 and except for a short visit to Mexico in 1955, and another visit in 1957, maintained his residence in the United States until he was deported on March 8, 1962.

His wife, a United States citizen, residing in the United States, whom he married in 1961, sought her Congressman's help in obtaining legal residence for the Petitioner. In August 1962, the Congressman advised her by telegram to have Petitioner proceed immediately to the American Consulate in Mexico. Petitioner followed the advice and for about the next eight months stayed in Mexico, apparently in hope of obtaining a visa.

The American Consul ultimately denied petitioner's application for a visa, apparently finding that his conviction in 1951 for assisting the unlawful entry of Mexican nationals brought him within Section 212 (a) (31) of the Act which declared him ineligible for the issuance of a visa as it precludes any alien, who for gain, encouraged, induced, assisted, abetted or aided any other alien to enter or to try to enter the United States in violation of law.

The petitioner returned illegally on May 3, 1963 to join his family.

On November 19, 1963, he was convicted for having entered the United States without permission after having been deported. In the present deportation proceedings, petitioner is charged with being deportable as one who entered the United States without inspection on May 3, 1963.

After exhausting all other administrative appeals, Petitioner filed a motion for reconsideration before the

United States Department of Justice, Immigration and Naturalization Service, Board of Immigration Appeals, Washington, D. C. This motion for reconsideration was denied on March 8, 1967.

SPECIFICATIONS OF ERROR

1. There has been no hearing by the Immigration Service to determine that petitioner is ineligible for a visa by virtue of the fact that he induced an alien and brought an alien into the United States "for gain." The conviction by itself does not show a finding that such act was "for gain," and this issue has never been determined in this case in connection with the proceedings, nor in the trial in which he was convicted.

2. Petitioner is entitled to know in specific detail the basis upon which eligibility is denied and thereafter is to be afforded an opportunity to refute any evidence upon which such ineligibility is predicated.

3. The issue has never been determined whether the petitioner could be accorded discretionary relief of any kind under the law, for petitioner could establish that he had seven years residence in the United States, he was entitled to discretionary relief and there is nothing in the record to establish that issue at any hearing. Petitioner was never advised of his rights at any hearings to apply for discretionary relief, nor

was he advised of his rights in non-technical language of any such applicable provisions of the then existing law. It was the duty of the Special Inquiry Officer to inform the petitioner of his apparent eligibility to apply for any of the benefits enumerated in the seventh provisos of the Act of 1917, and to afford him an opportunity to make application therefor during the hearing.

4. While the deportation hearing is not deemed criminal in nature, the recent cases have determined that it is quasi criminal and, in view of the recent decisions of the United States Supreme Court, the conviction of petitioner in the United States District Court of San Diego is void and cannot be used as a basis for precluding eligibility under the said Section 1182 (a) (31), as no such finding in law now exists.

5. All proceedings should be remanded, including the deportation proceedings, for the petitioner was not afforded his constitutional safeguards under the recent decisions of the United States Supreme Court.

CONCISE ARGUMENT OF THE CASE

This matter must be remanded for further hearing before the Special Inquiry Officer for the purpose of making two definite determinations of fact, which do not appear on the record.

1. The first is the determination of whether the act of smuggling for which petitioner was convicted and entered his plea of guilty involved the further element of "for gain," for if it did not, then the petitioner's exclusion proceedings and hearings and refusal of the immigrant visa based upon this assumed fact are contrary to law and lacking in due process of law in that the Immigration and Naturalization Service failed to give proper interpretation to this Code Section.

2. The second is that the Special Inquiry Officer at the hearing failed to advise the petitioner of any rights by which he could establish eligibility by virtue of the seventh proviso of the Act of 1917.

3. The petitioner is entitled to know upon what basis the Consul denied him eligibility and to be afforded the opportunity to refute such evidence or the interpretation thereof, if erroneously applied.

With respect to this point, this Court should follow the decision and proceed to evidence as held in the case of Rose v. Woolwine, 344 Fed. 2d 993, (1965).

Here it was held that the Court could order the review of matters in an immigration proceeding that would not only bear upon the question of deportability, but would have serious consequences so far as the subject visa was concerned.

In the cited case, the petitioner, after deportation proceedings against her had been terminated, left the United States and proceeded to Cuba where she applied to the American Consul for a visa. The visa was denied when the Consul received statements from the former husband and mother-in-law of petitioner, putting into question petitioner's morals. At no time was she allowed to see the charges made against her or given an opportunity to face and cross-examine her accusers.

She underwent an examination by a psychiatrist of her own choosing and received a clean bill of health, but this failed to affect the result -- the visa was still withheld.

Frustrated, this petitioner then resorted to a desperate alternative. She effected a re-entry into the United States in November, 1957, by falsely representing herself to be an American citizen. On October 28, 1963, she was served with an Order to Show Cause why she should not be deported for entering the United States without an inspection, 8 USCA 1251 (a)(2) and failed to file an annual address report, 8 USCA 1251 (a)(5) (1305).

The Court stated at page 996:

"The Act as we have seen, recognizes that more may be at issue in a deportation hearing than the bare question of deportability. Upon the determination of that issue may hang serious consequences which will convert the order of deportation into an effective permanent bar, depriving a person 'of all that makes life worth living.' Ng Fung Ho vs. White, 259 US 276, 284, 42 S.Ct. 492, 495, 66 L.Ed. 938 (1922). It is in the interest of the United States as well as the alien, indeed it is a service to justice, to allow her to present whatever is pertinent to the allegations reasonably thought to be in the file, and which may affect her right later to seek a visa for re-entry. To deny this - her only opportunity to have procedural due process - and to remit her to the discretionary action of a Consul who may be directly influenced by matters in the file not subject to attack or refutation in a foreign land, where no United States court sits, casts grave doubt on the constitutional adequacy of the deportation proceedings. Such an interpretation is not to be favored."

Rose v. Woolwine, 344 Fed.2d 993 (1965).

We also refer to the case of Tejeda v. United States Immigration and Naturalization Service, 346 Fed.2d 389 (1965) cited by this Court.

This Court said (at page 391):

"In reviewing the administrative record to determine whether any legal cause exists for reversal of the deportation order, we should bear in mind at all times the superior expertise of the administrative agency whose actions we are called upon to review. At the same time, we must forever be on guard against a tendency to abdicate our function and merely rubber stamp the administrative disposition. We are not called upon to substitute our fact-finding powers for those of the agency, but rather to insure against decisions based upon inadequate findings, findings contrary to law, or findings reached without proper regard for prescribed procedural requirements . . ."

Quoting at page 392, this Court further stated:

"We hold that the record before us in this case is insufficient to enable us to determine whether discretionary or mandatory relief is available to petitioner. In particular, we find the administrative record grossly inadequate in its

account of what transpired at the meeting between petitioner and the American Consul for the Philippines in late 1947 or early 1948. Due to the mistaken notion that petitioner did not qualify for non-quota immigration status under 22 USC, Section 1281, both the Special Inquiry Officer and the Board of Immigration Appeals dealt only superficially with the events of that unsuccessful attempt by petitioner to gain readmission to the United States . . ."

And at page 393:

". . . It appears, however, that relief would be available to petitioner under certain possible findings of fact. It is not our function at this stage of the proceedings to speculate on the legal significance of each possible set of findings relating to petitioner's inquiries at Manila. The occasion is not ripe, for example, for this Court to determine the consequences of a factual finding that the Consul merely told petitioner that his re-entry visa had expired, and said nothing more concerning other possible methods of re-entry. Rather, this Court must remand for further findings to determine if any set of facts would give rise to a reversal of the deportation order. We hold that

petitioner would be eligible for relief under at least one set of findings, viz, if it is shown that he was actually and reasonably misled by the affirmative acts and misstatements of the American Consul. To hold to the contrary if this is in fact what transpired, and deny any form of relief from the order of deportation, would result in the punishment of a poorly-educated alien for his reliance on the advice of a presumptively well-informed official of the United States Government. This we would deem improper."

Tejeda v. United States Immigration and Naturalization Service, 346 Fed. 2d 389 (1965).

There is nothing in the record of the hearings before the Special Inquiry Officer to establish that at that hearing the petitioner was advised of his rights to apply for discretionary relief, nor was he advised of his rights in non-technical language (8 CFR 242.16 and 242.17).

"The Special Inquiry Officer shall inform the respondent of his apparent eligibility to apply for any of the benefits ennumerated in this paragraph, and shall afford him an opportunity to make application therefor during the hearing." 8 CFR 242.17.

The record is entirely silent on this subject. A Special Inquiry Officer in proceedings in 1962, as well as in the current proceedings, was obligated to notify the petitioner of his right to discretionary relief in the form of suspension of deportation, adjustment of status, creation of a record of lawful admission for permanent residence. If the Special Inquiry Officer failed to comply with the Code of Federal Regulations in the above respects, then the deportation proceedings was in violation of the law and regulations.

If the deportation order of March 8, 1962 was invalid, then the petitioner did not depart from the United States under an order of deportation. His residence should have been established under the seventh proviso of Section 3 of the Act of 1917, and made retroactive nunc pro tunc as of 1952.

Under the provisions of Section 212 (c), the petitioner was a returning resident alien, who had not departed from the United States under an order of deportation (See §212(c), Immigration and Nationality Act of 1952).

From the foregoing, therefore, it must appear that petitioner is eligible to have his residence established in the United States under the seventh proviso, as well as under §212(c) of the Immigration and Nationality Act of 1952, if he meets the moral qualifications.

The record establishes that the petitioner is a person of good moral character.

It is therefore contended that on December 23, 1952, petitioner was statutorily eligible to qualify for the relief under the seventh proviso of Section 3 of the Act of 1917. This was his Status, namely, seven years' residence, which was preserved under the savings clause of the Immigration and Nationality Act of 1952. Provisions of this Section may be applied for and invoked nunc pro tunc in the deportation proceedings of March 8, 1962. There is no evidence whatsoever that the petitioner was advised of his rights under the provisions of 8 CFR 242.17. If such residence were to be established prior to his last entry, then he should have his rights to proceedings under §212(c) of the Act of 1952 as a returning lawful resident.

Petitioner in this case also filed application for suspection of deportation on Form I-256, and this was introduced in evidence as Exhibit No. 3. This application was based upon seven years' residence under §244(a)(1) of the Act of 1952. He has resided continuously in the United States since 1944, and from 1944 to 1950 in Oxnard and in various other places to date.

His departure from the United States in 1953, 1955, 1957 and 1962 were of a casual and unintentional nature.

The petitioner has established good moral character as above stated and the only question to be determined as to his eligibility for suspension is the legal effect of his absences

from the United States. His good moral character was established by the testimony of reputable persons, as well as from church records.

On the occasion wherein the petitioner presented himself to the American Consulate in Nogales, he was requested to do so by a Congressman. He did so with the impression that he would be the recipient of an immigration visa to reside with his wife in the United States.

The application made by petitioner in this case under §244(a)(1) of the Act should be liberally construed according to the Circuit Court of Appeals.

In Wadman v. Immigration and Naturalization Service, (9th Circuit) 329 Fed. 2d 812 (1964), at pages 816-817, the Court said:

> "In construing Section 244 we are in an area in which strict construction is peculiarly inappropriate. The apparent purpose of the grant of discretion to the Attorney General is to enable that officer to ameliorate hardship and injustice which otherwise would result from a strict and technical application of the law. A strict and technical construction of the language in which this grant of discretion is couched could frustrate its purpose. A liberal construction would not open the door to suspension of

deportation in cases of doubtful merit. It would simply tend to increase the scope of the Attorney General's review and thus his power to act in amelioration of hardship."

Wadman v. Immigration and Naturalization Service, (9th Circuit) 329 Fed. 2d 817 (1964).

Although the petitioner has departed from the United States since his entry in 1944, these departures have been unintentional, without the motive by petitioner to change his residence.

Miranda v. Arizona (1966), 384 US 436, 16 L.Ed 2d 694, 86 S.Ct. 1602, was foreshadowed by two cases in particular. Massiah v. United States (1964), 377 US 201, 12 L.Ed. 2d 246, 84 S.Ct. 1199, which held that under the Sixth Amendment guaranty of an accused's right to the assistance of counsel, the defendant's incriminating statements, elicited by government agents after he had been indicated and in the absence of his retained counsel, were not admissible at his trial.

Escobedo v. Illinois (1964), 378 US 478, 12 L.Ed. 2d 977, 84 S.Ct. 1758, which held that an accused in a state prosecution was denied the assistance of counsel, and that no pre-trial statement elicited by the police during interrogation might be used against him at his trial, where the police investigation, conducted prior to indictment, was no longer a general inquiry into an unsolved crime but had begun to focus on

a particular suspect, the suspect having been taken into police custody, the police carried out a process of interrogation which lent itself to eliciting incriminating statements, the suspect had requested and had been denied an opportunity to consult with his lawyer, and the police had not effectively warned him of his absolute constitutional right to remain silent.

Miranda has now decided that in the absence of a suspect's intelligent waiver of his pertinent constitutional rights, a suspect, prior to any in-custody police questioning, must be warned in clear and unequivocal terms (1) that he has a right to remain silent, (2) that any statement he does make may be used as evidence against him, (3) that he has a right to consult with, and have present prior to and during interrogation, an attorney, either retained or appointed, and (4) that if he cannot afford an attorney, one will be appointed for him prior to any questioning if he so desires. Each of these four warnings must be given, it not being sufficient to give some but not all of these warnings.

In view of the fact that the sole basis for the deportation proceedings is predicated on the prior conviction of the petitioner, pursuant to Title 8 USCA 144, the use of this as the basis for his deportation proceedings and the findings thereon could not properly be considered, because of the proceedings leading to that conviction, defendant was apparently deprived of certain constitutional rights when in custody. On

these safeguards the record is absolutely and completely silent.

Following the rules laid down in the Miranda case and in the Escobedo case, supra, when petitioner was taken in custody, he was entitled to the safeguards stated therein.

The record in the San Diego 1951 conviction is absent with respect to the required showing on the factual issues of whether defendant suffered a deprivation of some of his constitutional rights by failure to be warned in clear and unequivocal terms thereof - not some, not any, but all four.

The record shows that petitioner after being taken into custody, was indicated and when he appeared on the second day of July, 1951, for arraignment and plea, he was present in custody and without counsel. The trial court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the Court, whereupon the defendant that he waived the right to the assistance of counsel and entered his plea of guilty.

It should be borne in mind that defendant was an ill-educated immigrant, unfamiliar with the English language, not versed in the same, frightened and unprepared to defend himself, or to be aware of his rights or the effect of waiving counsel.

While we can find no case in point covering a prior felony conviction for a federal offense, attention is nevertheless called to two California cases. People v. Ebner, 64 Cal.2d

297, 49 Cal.Rptr. 790, 411 Pac.2d 578, and People v. McGinnis, 57 Cal.Rptr. 661.

In People v. Ebner this Court held:

> "We have held that a prior felony conviction cannot support adjudication of habitual criminality under Penal Code, Section 644 unless in the prior proceedings, defendant was represented by Counsel or intelligently and understandingly waived that right."

In the case of People v. McGinnis, this Court again repeated the rule, especially in cases involving a foreign conviction, to the effect that proof that does not show that the defendant was there represented by counsel, or, that he waived the right thereto, is not sufficient and cites People v. Shanklin, 243 A.C.A. 94, 102, 52 Cal.Rptr. 28, which latter case also held that the trial court must determine whether defendant had been represented by counsel upon former felony conviction, and if not, whether he intelligently and understandingly waived that right.

It is conceded that the Courts have held that deportation proceedings are not criminal in nature. However, the Supreme Court has held that such matters are at lease quasi criminal in nature, as evidenced by the degree of proof now required in such proceedings, as well as statements and considerations to

the effect that the punishment in such proceedings are of a lasting and far greater effect than those which prevail many times in true criminal proceedings.

Our United States Supreme Court in the case of Woodby, Petitioner v. Immigration and Naturalization Service, decided concurrently with Sherman, Petitioner, v. Immigration and Naturalization Service, (October 1966), 385 US ___, 17 L.Ed. 2d 362, 87 S.Ct. 483, held:

> ". . . To be sure, a deportation proceeding is not a criminal prosecution. Harrisiades v. Shaughnessy, 342 U.S. 580. But it does not syllogistically follow that a person may be banished from this country upon no higher degree of proof than applies in a negligence case. This Court has not closed its eyes to the drastic deprivations that may follow when a resident of this country is compelled by our Government to forsake all the bonds formed here and go to a foreign land where he often has no contemporary identification. In words apposite to the question before us, we have spoken of 'the solidity of proof that is required for a judgment entailing the consequences of deportation, particularly in the case of an old man who had lived in this country for forty years . . .' Rowaldt vs.

Perfetto, 355 US 115, 120.

"In denaturalization cases the Court has required the Government to establish its allegations by clear, unequivocal, and convincing evidence. The same burden has been imposed in expiration cases. That standard of proof is no stranger to the civil law.

"No less a burden of proof is appropriate in deportation proceedings. The immediate hardship of deportation is often greater than that inflicted by denaturalization, which does not immediately at least, result in expulsion from our shores. And many resident aliens have lived in this country longer and established stronger family, social, and economic ties here than some who have become naturalized citizens.

"We hold that no deportation order may be entered unless it is found by clear, unequivocal and convincing evidence that the facts alleged as grounds for deportation are true . . ." Woodby, Petitioner, vs. Immigration and Naturalization Service, decided concurrently with Sherman, Petitioner, vs. Immigration and Naturalization Service, (October 1966) 385 US ___, 17 L. Ed. 2d 362, 87 S. Ct. 483.

Attention is called again to the statement of facts in which the "ties" of the petitioner and that of his family are more particularly described and which establish the hardships that would be caused not only to petitioner but to his children and wife in the event that the deportation order was made effective.

Petitioner respectfully urges that not only is the basis for exclusion contrary to law by virtue of an erroneous interpretation of Title 8 USCA 1182(a)(31), but it is erroneous because this prior conviction in the United States District Court in San Diego cannot be invoked as it fails to meet the safeguards announced by the United States Supreme Court. Therefore, the application of said judgment of conviction in the instant case is void.

The United States Supreme Court on May 15, 1967, extended a blanket of constitutional safe-guards to minors when they are tried in Juvenile Courts in the case of Gault v. Arizona, decided May 1967 by the U.S. Sup. Ct.

In establishing the Bill of Rights' protection for juveniles that has been guaranteed adults, the majority opinion (written by Justice Fortas) stated:

> "The feature of the juvenile system which its proponents have asserted are of unique benefits will not be impaired by constitutional domestication."

The majority of the Court apparently did not consider nor place any degree of importance on the contention of Justice Stewart, as stated in his dissent, to the effect that juvenile proceedings are not criminal proceedings, are not civil trials nor adversary proceedings but the imposition of a condition rather than a punishment for a criminal act.

The modern trend indicates the development of these safe-guards to situations other than those which are purely criminal in nature.

Our nation's highest military Court has recently ruled that the armed forces must abide by the Supreme Court ban on confessions obtained from defendants who have not been fully advised of their right to a lawyer in overruling the conviction of an airman and ordering a new trial.

Consideration must be given to the lasting effect of the subject order of deportation. If carried out, these results must inevitably ensue.

Petitioner will be deported to Mexico, and under existing laws, can never lawfully return to the United States for residence at any time. Whether he can there make a decent living for himself and his family is doubtful.

But what happens to the wife and children under these circumstances, in addition to this cruel and unusual punishment inflicted on the petitioner, which is the equivalent of banishment for life from the United States.

American children, citizens by birth, a citizen wife, in order to obtain the benefits of the consortium, love and affection, guidance and support of the father and husband and not become public charges, must follow petitioner, and while not legally deprived of their American citizenship, in fact, they too are exiled to a land foreign to them, actually deprived of the benefits in every form of American citizenship and the benefits of living, education and all else afforded to citizens and residents of these United States.

Before these drastic measures are taken and these dire results ensue, every legal and fair consideration should be had to insure that petitioner has been afforded every right and the benefit of all laws and determined rules of procedure.

The matter should therefore be remanded to the Immigration and Naturalization Special Inquiry Officer with instructions to afford petitioner a new hearing on these vital issues, coupled with a record of the entire proceedings with adequate and appropriate findings of fact and conclusions of law and with the hearing to be of such a nature that it is complete in all phases, so that petitioner can cross-examine

witnesses and refute evidence, produce his own witnesses and evidence, so that justice in reality is finally afforded and accomplished.

Respectfully submitted,

JOHN F. SHEFFIELD &
NORMAN B. SILVER

By: John F. Sheffield

Attorneys for Petitioner

CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

/s/ John F. Sheffield

JOHN F. SHEFFIELD

Attorney for Petitioner